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In the Application of: Rolf Hertling et al

Ser. No.: 09/831,842

Filed: August 21, 2001

For: METHOD FOR DETERMINING THE THICKNESS OF  
A MULTI-THIN-LAYER STRUCTURE

Examiner: Patrick J. Connolly

Group: 2877

Assistant Commissioner for Patents  
Washington, DC 20231

OFFICIAL

**DECLARATION UNDER 37 C.F.R. 1.131**

Dear Sir:

I, Rolf Hertling, declare as follows:

1. I am an inventor of the subject matter described and claimed in the above-identified US Patent Application Serial No. 09/831,842.
2. The acts relied upon to establish my earlier date of invention were carried out in a WTO member country, namely Germany.
3. As can be seen from the attached memoranda, prospectus, correspondence and various other documents, the following events occurred:

a) Disclosure and dissemination of the RT-measuring System on February 3, 1998 in an internal memorandum of Applicant;

b) Disclosure and dissemination of ODTc Phase Change stacks for ETA Optik to determine optical constants in a letter dated March 10, 1998, including a table "ODTC Phase Change stacks for ETA-Optik to determine optical constants".

This table contains the layer-stack for DVD-RW, which accurately corresponds to the measurement object of the embodiment described in the present application;

- c) Illustration and disclosure of the measuring method of the present invention in a document on March 18, 1998 (time, 5:26) (four pages);
- d) Disclosure of the use of the RT tester on CDs on March 18, 1998;
- e) Disclosure of the inventive measuring method, as well as a device for this purpose in a prospectus, which was distributed at a convention at REPLITech in Utrecht, Netherlands on March 2<sup>nd</sup> through March 5<sup>th</sup>, 1998;
- f) Disclosure and discussion of the present invention via emails between the firm Philips and the firm ETA-Optik GmbH on May 27 and 29, 1998;
- g) Disclosure and dissemination of a measuring example and results on May 28, 1998, including comparison of measured reflectance spectrum and model calculation; and
- h) Disclosure and dissemination of a data table dated May 28, 1998, relating to "sputter samples for ETA-RT test verification" (two pages).

4. From these documents, it can be seen that my date of invention was prior to June 5, 1998. In addition, due diligence is also demonstrated by these documents, and is further supported by my subsequent patent applications, namely German application 198 52 323.8 filed on November 12, 1998, which culminated in the present application.

5. I further declare that all statements herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false

statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the above-referenced application or any patent issuing thereon.

DATE: 13.11.2003By: Rolf Hertling

Rolf Hertling